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FEDERAL COMMUNICATIONS
OFFICE OF SECRETARY

May 30, 1996

Mr. William F. Caton
Office of the Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

Re: Comments, CC Docket No. 96-98

Dear Mr. Caton:

Enclosed for filing please find an original, and sixteen copies, of the Comments of the Association of Telemessaging Services International (ATSI) in the proceedings, FCC 96-182, CC Docket No. 96-98.

ATSI respectfully requests that the Commission accept these late-filed comments in the above referenced proceedings. On April 1 of this year, the law firm that had served as legal counsel for ATSI over the past 14 years, and whose availability had been expected regarding these proceeding implementing the Telecommunications Act of 1996, unexpectedly resigned. ATSI procured representation as quickly as possible and immediately began developing its positions with respect to these and other proceedings; nevertheless, the unexpected resignation of the law firm as counsel to ATSI delayed the Association's ability to file its comments to these proceedings in a timely fashion.

Please return the enclosed copy of this letter with an appropriate notation affixed acknowledging receipt.

Sincerely,

Herta Tucker
Executive Vice President

cc: International Transcription Services, Inc. (1 copy)
2100 M Street, N.W., Suite 140

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Before the
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OFFICE OF SECRETARY

In the Matter of

Implementation of the Local
Competition Provisions in the
Telecommunications Act of 1996

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CC Docket No. 96-98

COMMENTS OF
THE ASSOCIATION OF
TELEMESSAGING SERVICES INTERNATIONAL

ASSOCIATION OF TELEMESSAGING
SERVICES INTERNATIONAL (ATSI)

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ASSOCIATION OF TELEMESSAGING SERVICES INTERNATIONAL
OUTLINE OF ARGUMENTS

- I. **The Commission Should Adopt Federal Guidelines Which State Regulatory Bodies Will Follow So That Small Businesses May Effectively Compete as Enhanced Service Providers. ¶¶ 25-41.**

- II. **The Commission Should Develop Federal Guidelines for Interconnection and Unbundling So That Enhanced Service Providers May Access All Basic Service Functions. ¶¶ 49-65, ¶¶ 74-116.**
 - A. **All Technically Feasible Points of Interconnection Should Be Made Available So That Enhanced Service Providers May Access Basic Service Functions at Reasonable Costs. ¶¶ 56-65.**

 - B. **Unbundled Elements Should Be Defined to Include All Basic Service Functions, Offered at the Smallest Practical Level and with Costs Disaggregated on a Service-by-Service Basis, So That Small Businesses May Compete with Incumbent Local Exchange Carriers in the Provision of Enhanced Telecommunications Services. ¶¶ 74-116.**

- III. **Access to Incumbent LEC Network Functions and Features Must Be Available at Costs That Are Just, Reasonable and Nondiscriminatory. ¶¶ 117-156.**

- IV. **The Commission Should Establish Federal Guidelines for Collocation So That Enhanced Service Providers May Access the Incumbent LEC Network with Costs Comparable to Collocation within the Central Office. ¶¶ 66-73.**

- V. **The Commission Should Establish Federal Guidelines for Good Faith Negotiations That Include Opportunities for Alternative Dispute Resolution to Minimize Costs and Lost Business Opportunities Associated with Protracted Proceedings and Complaint Procedures. ¶¶ 46-48, ¶¶ 264-272.**

Before the
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Washington , D.C. 20554

In the Matter of

Implementation of the Local
Competition Provisions in the
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CC Docket No. 96-98

**COMMENTS OF
THE ASSOCIATION OF
TELEMESSAGING SERVICES INTERNATIONAL**

The Association of Telemessaging Services International (ATSI) submits the following comments in response to the Commission's Notice of Proposed Rulemaking in these proceedings, FCC 96-182, adopted and released April 19, 1996.

STATEMENT OF INTEREST

The 640 service bureaus represented by the Association of Telemessaging Services International (ATSI) provide live telephone answering services and voice mail to over half of the 800,000 customers served by more than 3,000 service bureaus nationwide. ATSI members have been

providing the American public with the latest telecommunications service offerings for over 60 years and introduced to the market voice messaging services to supplement its traditional live telephone answering service. Telemessaging service bureaus were the very first enhanced service providers in the telecommunications field and today represent the only enhanced service providers whose basic service involves, first and foremost, "people answering people". Because of this unique aspect of telemessaging services, telemessaging plays an important public service function, providing live answering options for the medical and health service sectors, and others, where person-to-person communication is essential.

As the only small business association to be a member of the Information Industry Liaison Committee (IILC), ATSI continues to be instrumental in the development and deployment of open network architecture and the latest telecommunications technology. The ATSI membership consists almost entirely of small business service providers, with over 95 percent of the membership qualifying as small businesses, and sixty percent of the membership represented by female owned and operated business enterprises.

Telemessaging service bureaus require access to the incumbent local exchange carrier's network elements, including their basic service arrangements, functions and features, in order to provide telemessaging services to their customers. The telemessaging industry requires access to such

basic network functions as call forwarding, operator revert, personal receptionist service, dial tone, stutter dial tone, telephone listings, directory assistance, paging activation, and 2-way DID (directed inward dialing). The industry also requires access to such capabilities as integrated services digital network (ISDN), signaling system 7 (SS7) and the advanced intelligent network (AIN). Telemessaging service providers are require these facilities and capabilities in order to assure their ability to provide satisfactory call completion. There are no technically feasible alternatives and no bypass options available, and the cost of accessing these offerings represent the second highest operating cost for telemessagers. The implementation of Sections 251 and 252 of the Telecommunications Act of 1996, as well as other provisions of the Act, is therefore crucial to the ability of telemessaging industry to offer competitive services in the marketplace.

SUMMARY

ATSI supports the development of a regulatory framework that offers small businesses the necessary opportunities to compete as enhanced service providers and agrees with the Commission that implementation of the Telecommunications Act must preserve the Act's pro-competition objectives. ATSI urges the Commission not to rely on the appeal of such terms as "level playing field" and "pro-competition"; rather, the Commission should be guided by outcomes, including the provision of means by which small business service providers may

effectively compete in the marketplace. Effective competition requires unimpeded access to incumbent LEC network elements, which include their basic service arrangements, functions and features, at rates that both allow enhanced service providers to offer competitive services and prohibits an incumbent local exchange carrier from offering similar services at noncompetitive, below market prices. The development and preservation of such an environment will allow market participants to offer new, innovative products and services for end-users and customers. It will also ensure the continued availability of live telemessaging services where people answer people, a unique aspect of telemessaging among other enhanced telecommunications services.

Within the context of implementing Section 251 and 252 of the Act, ATSI supports the development of federal guidelines as a means of ensuring a favorable environment for small business service providers offering competitive services in the various states. Federal guidelines are particularly relevant in the provision of interconnection, collocation and unbundled network elements at prices that are just, reasonable and nondiscriminatory. Telemessagers rely on access to specific basic service arrangements, functions and features within the LEC network, at points of interconnection and with opportunities for collocation that will not impede their ability to offer the variety of services associated with telemessaging. Telemessagers also require access to network elements, and their basic service arrangements, functions and features, unbundled at the smallest practical level. These must be made available at costs disaggregated at the same levels so

that the costs incurred by telemessagers for the use of each network element are reflected in the pricing of competitive services offered by the incumbent LEC for the use of the same network element.

ATSI also supports the development of federal guidelines providing for alternative dispute resolution within the context of negotiations and arbitration outlined in Section 252 of the Act and in the requirements of good faith negotiations required in Section 251(c)(2) of the Act. Guidelines encouraging the use of alternative means for resolving disputes between incumbent local exchange carriers and enhanced service providers regarding interconnection, unbundling and collocation, and discriminatory pricing and practices relating to these, will help small businesses minimize costs associated with prolonged procedures.

ATSI further asserts that all federal standards and guidelines promulgated in these proceedings will be subject to the goals of Section 257 of the Act which requires the Commission to identify and eliminate market entry barriers for entrepreneurs and other small businesses in the provision and ownership, in whole or in part, of telecommunications services and information services. These same guidelines should also apply to states in carrying out their responsibilities under the Act.

Finally, ASTI urges the Commission to ensure that the implementation of Sections 251 and 252 of the Act achieves that following outcomes:

1. Access to incumbent LEC network elements, and their basic service arrangements, functions and features, must be made available and remain unimpeded so that enhanced service providers have every opportunity to offer desired telecommunications services at prices that are competitive and of quality that is acceptable to the marketplace;
2. The acceptability of points of interconnection, levels at which network elements are unbundled, and collocation arrangements must be determined in the final analysis in terms of whether or not the enhanced service provider is able to offer the same or similar competitive services as is the incumbent local exchange carrier itself; and
3. Competitive services offered by the incumbent local exchange carrier and similar services offered by the enhanced service provider must share the same cost structure in terms of the network elements utilized (which include their basic service arrangements, functions and features) for each telecommunications service

offered so that the cost component of each competitive service for the enhanced service provider and the incumbent local exchange carrier are essentially identical and the rates paid for the network elements by the enhanced service provider is no greater than the cost attributed to that element by the incumbent local exchange carrier.

ARGUMENTS

I. The Commission Should Adopt Federal Guidelines Which State Regulatory Bodies Will Follow So That Small Businesses May Effectively Compete as Enhanced Service Providers. ¶¶ 25-41.

The Commission should establish federal guidelines in the areas of interconnection, collocation and unbundling that will allow small businesses compete effectively as enhanced service providers. Federal guidelines are particularly important for small businesses that do not have the resources and economies of scale of larger telecommunications carriers and local exchange carriers to operate in a fragmented regulatory environment. At the same time, federal guidelines should not impede state commissions in the exercise of their residual regulatory roles. Federal guidelines,

within which the states may develop policies appropriate to local needs and specific circumstances, will enhance market entry of entrepreneurs and the growth of small business service providers and provide conditions for the development of new products and services by market participants.

**II. The Commission Should Develop Federal Guidelines for
Interconnection and Unbundling So That Enhanced Service
Providers May Access All Basic Service Functions. ¶¶ 49-65,
¶¶ 74-116.**

The Commission should establish a minimum set of interconnection points and unbundled elements and establish federal guidelines for the provision of additional interconnection points and unbundled elements as and when required by service providers. This is particularly important to enhanced service providers like telemessaging service bureaus that require access to the incumbent LEC network features and functions, unbundled at the smallest practical level, in order to offer competitive services in the marketplace.

Federal guidelines should also include a presumption that where one local exchange carrier offers interconnection or unbundling of a particular network element, or its feature or functionality, then

it is technically feasible for other local exchange carriers with comparable networks to provide the same or similar (functionally equivalent) points of interconnection and unbundled elements. If a function or feature is utilized by any telecommunications carrier, then it must be made available to all telecommunications carriers, including enhanced service providers. Federal guidelines should further include a presumption that where a function or feature is utilized, then there are costs that can be disaggregated from the total network costs and imputed to it for purposes of nondiscriminatory LEC pricing structures.

A. **All Technically Feasible Points of Interconnection Should Be Made Available So That Enhanced Service Providers May Access Basic Service Functions at Reasonable Costs. ¶¶ 56-65.**

The Commission asks how it should determine whether terms and conditions for interconnection arrangements are just, fair and nondiscriminatory. ¶ 61. ATSI urges the Commission to develop federal guidelines that measure "just, fair and nondiscriminatory" based on the ability of an enhanced service provider to offer competitive services with the terms and conditions available under a given interconnection arrangement made available by the incumbent LEC. Any other standard would fall short of the goal of the Act to create outcomes where enhanced service providers may bring competitive services to the market.

As enhanced service providers, telemessaging service bureaus rely on the availability of the incumbent LEC network and its functions and features in order to offer competitive telemessaging services. At the same time, incumbent local exchange carriers offer similar services and attempt to create market advantages by inflating the costs of interconnection or creating other barriers to interconnection. Incumbent local exchange carriers should be required to provide points of interconnection at true costs and on terms and conditions that do not prohibit the requesting enhanced service provider from offering the desired telecommunications service at competitive rates in the marketplace. Incumbent local exchange carriers should further be required to provide points of interconnection without consideration to the availability of a comparable service elsewhere.

The Commission asks what constitutes a "technically feasible point" within the incumbent LEC's network. ¶ 56. ATSI urges the Commission to adopt the principle that a technically feasible point of interconnection includes the service provider's point of presence, meet point, or other logical and reasonable points. The Commission should be guided by, and should instruct states to be guided by, the goal that enhanced service providers achieve points of interconnection that allow them to offer competitive services at levels of quality that are indistinguishable from those utilized by the incumbent local exchange carrier itself and through means by which the end-user enjoys unimpeded, uninterrupted use of the entire incumbent LEC network.

- B. Unbundled Elements Should Be Defined to Include All Basic Service Functions, Offered at the Smallest Practical Level and with Costs Disaggregated on a Service-by-Service Basis, So That Small Businesses May Compete With Incumbent LECs in the Provision of Enhanced Telecommunications Services. ¶¶ 74-116.

The Commission should develop guidelines for the states to determine whether: 1) network elements are provided in a manner that allows a requesting enhanced service provider to combine such elements in order to offer the desired telecommunications service to the public; 2) network elements are offered at the smallest feasible level that allows the enhanced service provider an ability to offer the competitive services desired; and 3) individual network elements are priced on a disaggregated, service-by-service basis and that they are offered to enhanced service providers at the same rates at which the LEC effectively pays itself for the use of the same network element. At all times, the burden of proving that access to a network element is either technically infeasible or proprietary in nature, or that any other reason for denial exists, resides with the incumbent local exchange carrier.

Furthermore, the Commission should establish a federal presumption that where a basic service function can be identified, it is able to be unbundled and its costs are able to be disaggregated so that costs are the same for the enhanced service provider and the incumbent LEC for each unbundled element. The Commission should further establish a federal presumption that where a function or feature is required to offer a competitive service, it is likewise able to be unbundled and its costs are able to be disaggregated.

While ATSI in general agrees with AT&T's concept of eleven network elements, ATSI views the identification of network elements, which include basic service arrangements, functions and features and their capabilities, as an ongoing, dynamic process, driven by market demand and product and service development. Specifically, a network element should include any basic service arrangement, function, or feature desired by the enhanced service provider. These should represent the components of the incumbent LEC network unbundled at the smallest practical level required by the enhanced service provider to offer competitive services. These should be at the very least identical to the network elements, and their basic service arrangements, functions, features, and capabilities used by the incumbent local exchange carrier itself in the provision of the same or similar competitive services.

The Commission asks what specific network elements should be identified. ¶ 116. ATSI urges the Commission to identify all basic service arrangements, functions and features and their capabilities required under any circumstances to provide a telecommunications service, including basic service functions such as call forwarding, operator revert, personal receptionist service, stutter dial tone, message waiting indication, paging activation, repeat calling, speed calling and 2-way DID. These should also include directory listings, directory assistance and billing services, as well as integrated services digital network (ISDN), signalling system 7 (SS7) and the advanced intelligent network (AIN).

**III. Access to Incumbent LEC Network Functions and Features
Must Be Available at Costs That Are Just, Reasonable and
Nondiscriminatory. ¶¶ 117-156.**

The Commission should also establish minimum guidelines that ensure the availability of interconnection arrangements and access to unbundled elements at costs that do not discriminate against enhanced service providers. As a general principle, the Commission should require incumbent local exchange carriers to offer interconnection and unbundled elements equal in type, quality and costs to those that LECs provide for themselves in the marketing of competitive services.

Past experience has shown that incumbent local exchange carriers have the opportunities to gain market advantages over enhanced service providers, and knowingly or unknowingly do so, by offering competitive services that utilize network elements at prices offered to the customer that do not reflect the true costs required to bring the service to market. In these instances, the incumbent local exchange carrier will effectively charge itself less than it charges competitors for the same functions and features by failing to impute total costs to each network element utilized. The Commission must ensure that the incumbent local exchange carrier price each of its competitive services at levels that exceed the rates it charges its competitors for the network functions and features needed and utilized to provide the same or similar competitive services.

While the principle that elements should be unbundled based on the needs of the requesting telecommunications carrier is sound when establishing guidelines for feasibility, ATSI urges the Commission to consider the network elements, and their basic service arrangements, functions and features, used by the incumbent local exchange carrier, and their true costs, when establishing guidelines for pricing.

IV. The Commission Should Establish Federal Guidelines for Collocation So That Enhanced Service Providers May Access the Incumbent LEC Network with Costs Comparable to Collocation within the Central Office. ¶¶ 66-73.

The Commission should establish standards for collocation, including guidelines for states to apply when determining whether physical collocation is not practical on technical grounds, space limitations, or for other reasons. ATSI urges the Commission to recognize the need of the requesting service provider to achieve collocation at its point of presence, or meet point, whenever the incumbent local exchange carrier refuses physical collocation within its central office.

The Commission asks whether physical collocation on the premises includes physical collocation at the central office only, or also at tandem offices, as well as all buildings or similar structures owned or leased by the incumbent local exchange carrier that house LEC network facilities. ¶ 71. ATSI urges the Commission to consider physical collocation within the central office as preferable, but not essential, and to recognize that the service provider's point of presence is also an allowable alternative. The essential guideline to apply regarding acceptable arrangements for collocation, whether it be defined as physical or virtual, will focus on quality of service and costs.

The service provider's need to access the LEC network at a reasonable cost is paramount and should govern the outcome of how and where collocation will be provided.

In this vein, rather than attempt to identify every acceptable collocation arrangement, or engage in detailed distinctions between physical and virtual collocation, ATSI urges the Commission to establish guidelines that recognize acceptable collocation arrangements as any point of contact or presence at which no charges, other than those that would be levied at a point of physical collocation within the central office, may be levied.

The Commission asks what type of equipment should be permitted to collocate on incumbent LEC premises. ¶ 72. ATSI urges the Commission to establish that any type of equipment may be permitted to collocate on the incumbent LEC premises, and access any network element, in order for the service provider to offer the enhanced service desired. Therefore, any equipment required by the enhanced service provider to offer competitive services, similar to those offered by the incumbent local exchange carrier, must be allowed and should be presumed technically feasible. Furthermore, ATSI recognizes the need to ensure that collocation within the central office or other incumbent LEC premises will create no potential physical harm to the LEC network.

V. **The Commission Should Establish Federal Guidelines for Good Faith Negotiations That Include Opportunities for Alternative Dispute Resolution to Minimize Costs and Lost Business Opportunities Associated with Protracted Proceedings and Complaint Procedures. ¶¶ 46-48, ¶¶ 264-272.**

The Commission should establish federal guidelines regarding good faith negotiations required under Section 251(c)(1) of the Act. These guidelines should identify and penalize tactics that impede access to points of connection and unbundled network elements, opportunities for physical collocation. All such tactics are costly and have an anti-competitive impact beyond the particular issue in dispute.

Federal guidelines should provide opportunities for the employment of appropriate alternative dispute resolution mechanisms between the incumbent local exchange carrier and service provider. These should include participation of recognized trade association organizations where their involvement would be appropriate and would serve a public service by reducing multiple negotiations involving the same issues, or issues that continue to arise, in a single forum or in more than one forum. This will provide for the prompt and speedy resolution of issues in dispute and minimize the costs associated with protracted proceedings and negotiations.

ATSI urges the Commission to develop guidelines that encourage dispute resolution to take place between the parties before requests are submitted to state commissions or before other mechanisms are employed, such as those provided under Sections 252 and 260 of the Act. Federal guidelines should also allow negotiations to revert back to earlier stages of negotiations at any appropriate time. This should also apply to instances where either the Commission or an appropriate state body has been petitioned through authority under the Act.

Federal guidelines should also apply to disputes involving allegations of discriminatory conditions under Section 252(i) as well as those raised under the authority of Section 260 of the Act. In all cases of disputes between incumbent local exchange carriers and enhanced service providers, guidelines should encourage negotiations between parties that fully utilize alternative dispute resolution, and standards of good faith negotiations should include a willingness to undertake these alternative mechanisms.

CONCLUSION

The Commission should develop federal guidelines for interconnection, unbundling and collocation that allows enhanced service providers to access network functions and features at costs that are just, reasonable and nondiscriminatory.

Network elements, their basic service arrangements, functions, features and capabilities, must be available to enhanced service providers, on an unbundled basis, on the same terms and conditions as when utilized by the incumbent local exchange carrier itself, which includes the requirement that the incumbent LEC effectively pay itself for the use of a function or feature at the same rate it charges the enhanced service provider. Points of interconnection and arrangements for collocation must also be available on terms and conditions that are just, reasonable and nondiscriminatory in such a way that enhanced service providers may offer competitive services when utilizing the incumbent LEC network. Finally, the Commission should provide opportunities for the utilization of alternative dispute resolution mechanisms for the speedy resolution of disputes between the incumbent local exchange carrier and the enhanced service providers.

Association of Telemessaging
Services International
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ATSI urges the Commission to implement Sections 251 and 252 consistent with the foregoing comments.

Respectfully submitted,

**ASSOCIATION OF TELEMESSAGING
SERVICES INTERNATIONAL (ATSI)**

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